UNITED STATES PATENT AND TRADEMARK OFFICE

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09/963,335	09/24/2001	Kenneth A. Klarfeld	MET2.PAU.23	2141

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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 December 2009</u>.
2a)☒ This action is **FINAL.**　　　　2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>20-42</u> is/are pending in the application.
　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>20-42</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
　　a)☐ All　b)☐ Some * c)☐ None of:
　　　1.☐ Certified copies of the priority documents have been received.
　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.
　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date <u>12/7/09</u>.
4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments with respect to claims have been considered but are moot in view

of the new grounds of rejection.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   Claims 20-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Herz,

(U.S. Pat # 5,758,257), in view of Williams, (U.S. Pat # 5,945,988) and Ellis, (U.S. Pat #

6,898,762).

        Considering amended claims 20 & 28, the claimed method of displaying a TV program to

a viewer, comprising *'processing information indicative of preferences of the viewer to develop a*

viewer characteristic information profile for the viewer' is met by Herz, col. 10, lines 6-55; col.

11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

'Storing the viewer characteristics information profile on a viewer storage device', is met

by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. *'Presenting the viewer with **a first***

*list of TV programs available for viewing, the programs **selected in accordance** with the*

characteristics information profile', is met by Herz, col. 23, lines 1-18 & col. 25, lines 49-67,

which teaches virtual channels of recommended programs or highlighting recommended

programs on an EPG or re-ordering the list of programs on the EPG, based on the instant

customer's profile.

Regarding the amended claimed feature of *'receiving feedback input from the viewer*

after viewing the first list, the input requesting different selections than in the first list'; and

'presenting the viewer with a second list including alternative TV programs for viewing, the

alternative list selected in accordance with an alternative characteristics information profile',

Herz discloses that the system determines if the customer actually watched the video programs

that were recommended by the agreement matrix, col. 26, lines 51-67; col. 31, lines 5-14; col.

46, lines 42-49, for the purpose of adjusting the agreement matrix of a particular customer.

If the customer did not select/watch the predicted program(s), then the system adjusts the

customer's profile, based on what program(s) was actually watched. Therefore the disclosure of

Herz, reads on the claimed subject matter, since after the agreement matrix is updated, then the

customer would be given an updated/adjusted (i.e., different) list of recommended programs, in

light of what was actually requested by the customer, see col. 27, lines 1-6; col. 41, lines 8-14;

col. 41, lines 57-63.

As for the newly amended feature, *'wherein the viewer characteristics information

profile and the alternative characteristics information profile coexist and the first list and the

second list remain available to the viewer'*, Herz does not explicitly teach such a feature.

Nevertheless Ellis, which is in the same field of endeavor, teaches an interactive EPG that

presents customized lists of programs based one or more customer profiles, col. 14, lines 11-36;

col. 20, lines 17-67. Ellis furthermore teaches that the user may insert and use multiple profiles.

In particular the multiple profiles may be active at the same time, col. 15; col. 16, Fig. 14. It

would have been obvious for one ordinary skill in the art at the time the invention was made to

modify Herz with Ellis, at least in order to allow the user have more than one active profile.

Ellis reads on the claimed subject matter because the reference clearly teaches that not

only can the user activate different profiles, such as profile #1-profile #x; but also once the user

is presented with a list of recommended programs based on the settings of the active profile(s),

see Fig. 15 & Fig. 16a, later the instant user can change one or more of the setting(s) of the

active profile(s), which will then present a different set of programs based on the current settings,

see Fig. 16b-16c; col. 16, lines 34-61. All of these profiles coexist and remain available to the

user, since these profiles can be saved, via the save agent 147 shown on Figs.13a-13f, col. 13,

lines 27-55.

As for the additionally claimed feature, *'wherein the feedback is based on the viewer answering a query'*, Herz does not specifically discuss the user being giving a prompt for feedback regarding the list. Nevertheless, Williams provides a teaching that after a viewer is prompted with a list of recommended shows that the system provides the viewer opportunities to view and/or record one or more of the recommended shows, which reads on the claimed *'query'*, see (Fig. 3; Fig. 4; col. 11, lines 21-60). If the viewer in Williams decides not to view or record any of the shows, then the system continues to monitor the viewing habits of the viewer and will subsequently provide a different list of programs. Thus Williams teaches presenting a second list of programs based on feedback from a viewer, from answering a query.

Williams provides other examples of prompting users of the system for feedback for evaluating recommended programming. For instance, the system may prompt the user as to whether the user liked or preferred one or more commercials; see col. 6, lines 45-65. The feedback from the user is utilized to more accurately suggest programming.

It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of prompting the user of a recommended list to select a program from the instant list or another list will be provided. This is motivated by the desire to attempt to provide the user with programs that will more likely be selected for view and/or record. If the viewer did not select any programs from the first list, then it is wise to provide the

user with a different list of programs, based on the updated viewing habits and preferences of the instant viewer, as taught by Williams, see col. 12, lines 1-15.

In another example, in Williams the system will monitor the habits of viewer for a certain period of time, and based on the history suggest user profile, along with the associated programming, col. 9, lines 64-67 thru col. 10, lines 1-25. The user is explicitly prompted with the question as to whether the user profile selected by the system, is in fact the correct user profile for the person currently using the system. If the wrong profile is selected, then the system will likely make ineffective listings of recommended programs. Therefore the system takes feedback from the user, via a query, in order to provide programming that is most desirable to the instant user.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for presenting TV programs to a viewer,

comprises steps that correspond with subject matter mentioned above in the rejection of claim

20, and is likewise treated. As for the additional feature, of the *'first list arranged without viewer

input',* in Herz the arrangement of the virtual lists are without user input, col. 45, lines 35-45.

Considering claim 33, the claimed subject matter reads on the user in Herz manually

selecting a different program, not on the recommended list of programs using a remote control

device, such as remote control device 1008, see col. 46, lines 42-60; Fig. 10.

Considering claim 34, by definition, at least some of the programs presented to the

customer in Herz, based on an agreement matrix re-calculated as a result of an adjusted customer

profile, would be different from the first list of recommended programs, as long as the programs

that were actually watched by the customer had content attributes different from the content

attributes of the programs in the first recommended list of programs.

Considering claim 35, since Ellis teaches that each profile may be saved, via save agent

147, each corresponding list would necessarily remain available to the user, see Figs. 9a-9b; Fig.

11; Figs.13a-13f; col. 13, lines 25-55.

Considering claim 36, the second list in Williams is unrelated to the first list, as to the
extent that the viewer's profiles & preferences change due to a different or unrelated viewing
history.

Considering claim 37, in Ellis the viewer is enabled to activate a particular profile, from a
plurality of profiles, i.e., *'alternative available lists'*, which will then display a particular set of
recommended programs.

Considering claims 38-42, Ellis teaches all subject matter, see col. 15, lines 1-28; col. 15,
lines 55-64; col. 16, lines 15-61; col. 19, lines 45-62; col. 20, lines 17-59; col. 23, lines 51-60.

Conclusion

4.   The prior art made of record and not relied upon is considered pertinent to applicant's
disclosure.

A)   Ellis (U.S. #7,185,355)   This reference is incorporated in its entirety within
the Ellis (U.S. #6,898,762), see col. 14, lines 11-24; col. 15, lines 50-55. This reference teaches
multiple profiles concurrently active and the user choosing between displaying a list
corresponding to the particular profile, see col. 13, lines 21-55. Also see Figs. 13-28 & cols. 12-
15.

B)   Das   Teaches a system that enables a user to choose from between different

profiles, see col. 2, lines 11-60.

C)   Stern   Teaches a system that enables a user to choose from between different

profiles, see col. 10, lines 1-15.

D)   Smith   enables a user interactively select from a plurality of preset of lists of

customized channels; col. 5, lines 15-45; col. 13m, lines 51-62.

5.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

        A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any response to this action should be mailed to:

> Commissioner for Patents
> P.O. Box 1450
> Alexandria, VA 22313-1450
> www.uspto.gov

> **or faxed to:**
> (571) 273-8300, (for formal communications intended for entry)
> **Or:**
> > (571) 273-7290 (for informal or draft communications, please label
> > "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F (9:00-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher Kelley/
Supervisory Patent Examiner, Art Unit 2424